

JUNEAU COUNTY SMALL CLAIMS PROCEDURES AND INFORMATION

The clerk of Small Claims Court cannot give you legal advice or answer questions requiring knowledge of law. The clerk must refer you to your own common sense or suggest you contact an attorney if you have legal questions. Some basic procedural questions are addressed below.

SMALL CLAIMS COURT MAY BE USED ONLY FOR CERTAIN TYPES OF CASES. THESE ARE AS FOLLOWS:

- Lawsuits (such as breach of contract, property damage or personal injury) when the amount claimed is \$5,000 or less;
- All evictions, regardless of the amount of rent claimed;
- Actions for the return of earnest money tendered pursuant to a contract for purchase of real property, regardless of the amount claimed;
- Replevins (repossession/return of property) -- value of the property may not exceed \$5,000 unless the property is consumer goods leased or purchased on credit from a dealer;
- Actions for the confirmation, vacation, modification or correction of an arbitration award where arbitration was in settlement of a controversy arising out of a transaction for the purchase of real property, regardless of the amount of that award;
- Garnishments (to enforce judgments from funds owed to the debtor) when the amount owed is \$5,000 or less;
- Property taxes (suits by municipalities to recover delinquent personal property taxes).

WHERE TO FILE YOUR LAWSUIT

For most claims, the proper county to file your lawsuit is:

1. Where the claim arose;
2. Where the property which is the subject of the claim, or part of it, is located; or
3. Where the defendant resides or does substantial business.

A consumer transaction is a purchase or lease of goods, property or services, or loan of money or credit, for personal, family, household or agricultural purposes. If your claim arises out of a consumer transaction, the lawsuit may be filed in the county:

1. Where the consumer resides;
2. Where the consumer made the purchase; or
3. If it was a credit transaction, where the collateral (property securing the transaction) is located.

SUMMONS AND COMPLAINT SMALL CLAIMS FORM AND AFFIDAVIT OF NONMILITARY SERVICE

The Clerk of Court's Office has a Summons and Complaint form with an accompanying Affidavit of Nonmilitary Service form that will be provided upon request. As the person starting the lawsuit, you are the plaintiff. Print or type your name and address in the space marked PLAINTIFF. Next, type or print the name and address of the person or company you are suing in the space marked DEFENDANT. It is important that the name and address of the party you are suing is correct. If the papers can't be delivered to the defendant, you might have to start over.

The next part of the summons and complaint you fill in is the PLAINTIFF'S DEMAND. Check one or more of the five boxes labeled MONEY, EVICTION, RETURN OF PROPERTY, RETURN OF EARNEST MONEY AND CONFIRMATION, VACATION, MODIFICATION OR CORRECTION OF ARBITRATION AWARD. On the line next to MONEY, insert the amount you request as damages. Simple interest may normally be charged at 5% annually from the date the amount was due until the date the court awards judgment and up to a maximum of 12% annually thereafter until the amount is paid, unless there is a contract which specifically states a different rate of interest. It is up to the plaintiff's discretion whether interest is to be charged and/or included. In estimating your damages from an automobile accident, remember that the legal measure of damages is not always the same as the cost of repair. Your legal damages are determined by taking the value of your vehicle before the collision and subtracting its value immediately after.

In the next section of the plaintiff's demand, labeled "Brief statement of dates and facts," simply write down in your own words what happened. Explain why you are suing the defendant. For example, if you are suing to make the defendant pay you money because of an auto accident, write the facts surrounding the accident, and why it was the defendant's fault. If the defendant was violating a traffic law, or not exercising reasonable care, write that he or she caused the accident "negligently." If there is not enough room in this space, check the box and add as many additional pages as you need.

Once you have completed the brief statement of dates and facts, you must take this document to a Notary Public BEFORE you sign it. The Clerk of Court's Office does have notaries available.

After you return your summons and complaint to the clerk, your case will be filed and given a number which you should always use in asking about it. If you ask the clerk for information about your case without giving the correct case number, you may be required to pay a search fee to get the information you want.

If the defendant resides in Juneau County and you are asking for money only, the summons and complaint will be served by regular mail, or if you desire, sheriff's service or private process service. If you are requesting eviction, return of property or if the defendant does not reside in Juneau County, the Plaintiff MUST accomplish personal service on the defendant. You cannot serve the papers yourself. Once the defendant is served, the original certificate (proof) of service must be filed with the Clerk of Court's Office. The plaintiff may file the certificate prior to the return date, but no later than in court on the date and time set for the Return Date.

The Summons and Complaint form must be served on in-state defendants at least eight (8) days prior to the initial appearance, five (5) days for eviction—excluding weekends and holidays. Defendants who reside out-of-state require a minimum of twenty (20) days service. It is the responsibility of the plaintiff or their attorney to see that service is accomplished in a timely fashion.

FILING FEES

Small Claims Summons and Complaint	\$94.50
Regular Mail (per Defendant)	\$ 2.00
Private Process/Sheriff's Service	Fees will vary. Please contact the appropriate sheriff's department/private process server in advance of service to discuss fees and payment options. Service fees are payable directly to the appropriate process server.

RETURN DATE (INITIAL APPEARANCE)

A court date and time will be assigned on the summons and complaint form. All initial appearances are held on Mondays at 12:30 p.m. in front of the Court Commissioner. The courtroom is located on the second floor of the Justice Center. The plaintiff may appear in person or by letter. The defendant may appear in person or may file a written answer with the court with a copy of the answer to be provided to the plaintiff. The written answer must be filed on or before the date and time stated on the summons and complaint.

If the defendant fails to come to court on the return date or answer on time, the Court Commissioner will enter a “default judgment” against the defendant provided that the required Affidavit of Nonmilitary Service form has been filed by the plaintiff. If the Affidavit of Nonmilitary Service is not filed, the case will be adjourned one time to the next return date to allow the plaintiff to file this form. If at the next return date the Affidavit has not been filed, the case will be dismissed. If the defendant appears in person and admits to the claim, a judgment will be granted by the court in favor of the plaintiff. A Notice of Entry of Judgment is mailed to all parties. The defendant is also mailed a Financial Disclosure Statement. If the defendant appears either in person or by written answer and denies the claim, the matter will be set for a court trial. All parties will receive notice from the court of the date and time of the court trial by mail. All parties need to keep the court informed of their current address to assure proper delivery of mail. All parties must appear at the court trial.

COURT TRIAL

The notice of court trial will be mailed by regular mail to all parties. Once again, please keep the clerk notified of your current mailing address. Your case will be heard at a court trial in front of the judge assigned to your case. Any party may file a written demand for a jury trial and pay the required fees (\$89.00/6 person jury). Demanding a jury trial brings your case under the formal rules of evidence and civil procedures. On the date of the trial, be sure to bring any necessary witnesses and documents. The judge or the jury will decide the case only on the evidence and arguments presented at the trial. Unless you have an attorney, demanding a jury trial for a small claims case is usually unwise.

POST JUDGMENT CONSIDERATIONS

Financial Disclosure Statement: Even though the court decides in your favor, the losing party still might not pay you the money due or return the property as ordered by the judgment. The court will order the defendant to complete a financial disclosure statement and return it to you. The statement discloses the defendant’s name, address, employers and their addresses, real property he or she owns, financial institutions in which he or she has funds on deposit, and other required information. The defendant must complete and mail this form to the plaintiff within fifteen (15) days of the judgment being entered by the court, unless within that time the judgment is paid in full. If the defendant does not pay the judgment in full or provide the plaintiff with the financial disclosure statement within the fifteen (15) days after the judgment is entered, the plaintiff may begin contempt of court proceedings.

Motion and Order for Hearing on Contempt: If the plaintiff does not receive a completed financial disclosure statement from the defendant within fifteen (15) days of the entry of judgment, a contempt action may be commenced. The clerk has a form that will be provided upon request. There is no charge to file the completed form, but it must be personally served by the sheriff’s department or a process server in the county where the defendant resides. Fees will vary. Please contact the appropriate sheriff’s department in advance of service to discuss fees and payment.

A hearing date will be assigned and all parties must appear. The defendant will usually be ordered to complete a financial disclosure statement at that time. If the debtor fails to appear, the court will authorize the issuance of a warrant for the defendant's arrest. Upon arrest, the defendant will need to complete a financial disclosure statement in order to be released from custody.

Docketing the Judgment: If a judgment is granted in your favor, you should have the judgment "docketed." The fee to docket a judgment is \$5.00. When the docketing fee is paid, the judgment will be placed on a civil lien index. After a judgment is docketed, it becomes a lien on any real estate owned by the debtor in that county for ten (10) years from the date of entry of judgment. If the debtor tries to sell the property, the purchaser will usually require that the lien be removed by paying the judgment in full. A transcript of judgment can be obtained from the clerk (\$5.00 fee required) and docketed in any other county where the defendant owns real estate, creating a lien on it also.

Earnings Garnishment: If a judgment is granted in your favor and the defendant does not voluntarily pay the judgment and if the defendant's wages are not exempt from garnishment, you may opt to commence garnishment proceedings. The plaintiff begins an earnings garnishment by filing an Earnings Garnishment Notice and two Earnings Garnishment forms. The clerk will provide these forms upon request. Complete the forms and return them to the clerk along with the required filing fee of \$92.50. If the amount due in owing is \$5,000 or greater the filing fee required is \$210.50. After the fee is paid, the plaintiff will be provided with an earnings garnishment packet. The garnishment will run for thirteen (13) consecutive weeks. For more detailed information on garnishment proceedings, please contact the small claims clerk.

Non-Earnings Garnishment: If a judgment is granted in your favor and the defendant does not voluntarily pay the judgment you may commence a non-earnings garnishment. This type of garnishment attaches to bank accounts. The clerk has a Garnishment Summons and Complaint for Non-Earnings form that will be provided upon request. There is a filing fee of \$92.50 required. If the amount due in owing is \$5,000 or greater the filing fee required is \$210.50. The mail and/or service fees for the Garnishment Summons and Complaint for Non-Earnings form vary on a case-by-case basis. Please contact the clerk for mail/service fees and for further detailed information regarding non-earnings garnishment procedures.

The above is a brief summary of general small claims procedures for Juneau County. If you have a question of a non-legal nature or a concern that is not addressed, please feel free to contact the small claims clerk at (608) 847-9355 for further assistance.